APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,587	09/21/2001	Kirk W. Skeba	42390P11693	5439

7590   06/13/2005

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EXAMINER
ENG, GEORGE

ART UNIT	PAPER NUMBER
2643	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>24 January 2005</u>.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-23</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-23</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   This Office action is in response to the amendment filed 1/24/2005.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.   Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-10, 16-22 and 30-36 of copending Application No. 10/028,467. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the claimed limitations, i.e., the receiving step, the comparing step, and the certifying step are found in copending Application No. 10/028,467 with obvious wording variations.

        This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 1-4 and 7-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Souissi (US PAT. 6,785,556) in view of Watanabe et al. (US 2002/0144134A1 hereinafter

Watanabe).

Regarding claim 1, Souissi discloses a computer system (210, figure 2A) comprising a

first software defined radio, a selected mode of operation, including a baseband unit (225, figure

2A) and a first analog front end (235, figure 1) coupled to the baseband unit, wherein the

computer system is configured to receive DSP software and the protocol stack software from a

Internet server (275, figure 2A) via a wireless transmission medium (col. 4 line 60 through col. 6

line 23). Souissi differs from the claimed invention in not specifically teaching to certify the first

software-defined radio for operation by the steps of receiving a first identification at the

computer system from a server, comparing the first identification with a second identification

stored at the first analog front end and certifying the first software-defined radio for operation if

the first identification matches the second identification. However, Watanabe teaches a technique

for providing a software defined radio and an approval system of a radio, which can flexibly

cope with specification alteration comprising a control unit to compare a measured value, i.e., a

second ID, obtained from a measurement circuit with information of the specification criterion,

i.e. a first ID, at a computer system from a server (100, figure 13) via a transmission medium,

and to approve the software defined radio for operation if the first IF matches the second ID

([0056] through [0065]). Therefore, it would have been obvious to a person of ordinary skill in

the art at the time the invention was made to modify Souissi in certifying the first software-

defined radio for operation by the steps of receiving a first identification at the computer system

from a server, comparing the first identification with a second identification stored at the first

analog front end and certifying the first software-defined radio for operation if the first

identification matches the second identification, as per teaching of Watanabe, in order to flexibly

cope with specification alteration.

Regarding claim 2, Watanabe teaches to disable the first software defined radio when the

first identifier does not match the second identifier ([0064]).

Regarding claim 3, Watanabe teaches to store the first identifier in a memory device (25,

figure 2) within the communication device prior to compare the first identifier with the second

identifier ([0040]).

Regarding claim 4, Souissi teaches to downloading a protocol corresponding with the

first software-defined radio (col. 5 line 62 through col. 6 line 2).

Regarding claim 7, Watanabe teaches the communication device and the network

gateway capable of using a variety different communication protocols via different networks

([0005] through [0008]) so that one of the ordinary skill in the art would recognize Watanabe in

capable of receiving a third identification at the computer system from the server via the

transmission medium, comparing the third identification with a fourth identification stored at a

second analog front end coupled to the computer system, and certifying a second software-defined radio for operation if the third identification matches the fourth identification, in order to operate at software-defined radio.

Regarding claim 8, the limitations of the claim are rejected as the same reasons set forth in claim 1.

Regarding claim 9, Souissi discloses an input/output bus coupled to the baseband unit and a network controller coupled to the I/O bus (figure 2A).

Regarding claim 10, Watanabe teaches to receive the first identifier from a server computer (100, figure 13) via a transmission medium coupled to the network controller ([0059]).

Regarding claim 11, the limitations of the claim are rejected as the same reasons set forth in claim 4.

Regarding claims 12-13, Souissi discloses the communication device comprising an I/O interface coupled to the I/O bus, a DSP (240 figure 2A) coupled to the I/O interface and a second bus coupled to the DSP, wherein the communication device further comprises a volatile memory (250, figure 2A) and a non-volatile memory (255, figure 2A) coupled to the DSP.

Regarding claim 14, Souissi disclose the analog front end (235, figure 2A), which obviously comprises analog-digital/digital-analog conversion logic coupled to the second bus, modulation logic (285, figure 2A), a transceiver coupled to the modulation logic and an antenna coupled to the transceiver (figure 2B and col. 5 lines 3 40-50).

Regarding claim 15, Watanabe teaches a non-volatile memory (25, figure 2) for storing the second identifier ([0040]).

Regarding claim 16, the limitations of the claim are rejected as the same reasons set forth in claim 7.

Regarding claim 17, Souissi discloses a network comprising a first client computer (210, figure 2A), a transmission medium coupled to the first client computer, and a server computer (275, figure 2A) coupled to the transmission medium that transmits DSP software and the protocol stack software. Souissi differs from the claimed invention in not specifically teaching a server computer coupled to the first client computer that transmits first identification data to the first client computer upon receiving a request from the client computer to certify a first software-defined radio implemented at the first client computer. However, Watanabe teaches a technique for providing a software defined radio and an approval system of a radio, which can flexibly cope with specification alteration comprising a control unit to compare a measured value, i.e., a second ID, obtained from a measurement circuit with information of the specification criterion, i.e. a first ID, at a computer system from a server (100, figure 13) via a transmission medium, and to approve the software defined radio for operation if the first IF matches the second ID ([0056] through [0065]). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Souissi in certifying the first software-defined radio for operation by the steps of receiving a first identification at the computer system from a server, comparing the first identification with a second identification stored at the first analog front end and certifying the first software-defined radio for operation if the first identification matches the second identification, as per teaching of Watanabe, in order to flexibly cope with specification alteration.

Regarding claim 18, Watanabe teaches a second communication device coupled to the transmission medium so that the network gateway transmits the first ID data to the second communication device upon receiving a request from the second communication device to certify the first software-defined radio implemented at the second communication device ([0021]).

Regarding claim 19, the limitations of the claim are rejected as the same reasons set forth in claim 7.

Regarding claim 20, the limitations of the claim are rejected as the same reasons set forth in claim 1.

Regarding claim 21, the limitations of the claim are rejected as the same reasons set forth in claim 4.

Regarding claim 22, the limitations of the claim are rejected as the same reasons set forth in claim 18.

Regarding claim 23, the limitations of the claim are rejected as the same reasons set forth in claim 7.

6.   Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Souissi (US PAT. 6,785,556) in view of Watanabe et al. (US 2002/0144134A1 hereinafter Watanabe) as applied in claim 1 above, and further in view of Paulsen et al. (US PAT. 6,055,575 hereinafter Paulsen).

Regarding claims 5-6, the combination of Souissi and Watanabe differs from the claimed invention in not specifically teaching the first identifier and the wireless protocol being received

as a component of a signed manifest so that the protocol at the baseband unit is executed if the manifest is validated. However, Paulsen teaches a virtual private network method for remote user to access a private network having a host to combine data with a header containing information about the protocol of the private data network, to encrypt the data and the header as a component of a signed manifest, and to transmit the encrypted data and the header over a secure communications path to the remote client, wherein the protocol is executed if the manifest is authenticated (col. 5 line 55 through col. 8 line 41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of Souissi and Watanabe in receiving the first identifier and the wireless protocol as the component of the signed manifest so that the protocol at the baseband unit is executed if the manifest is validated, as per teaching of Paulsen, in order to establish a secure communication in permitting an individual to access the private data network.

Response to Arguments

7.   Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

The obvious-type double patenting rejection will be withdrawn upon a terminal disclaimer in compliance with 37 CFR 1.321(c) is filed.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chapin (US PAT. 6,876,864) discloses a software-defined wireless communication

device having an independent certification of waveform software that can facilitate changes to

the waveform software by loading in new waveform software (abstract). Fye et al. (US PAT.

6,654,602) discloses services for subscriber units with dissimilar service configuration

capabilities (abstract).

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to George Eng whose telephone number is 703-308-9555.   The

examiner can normally be reached on Tue-Fri 7:30 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Curtis A. Kuntz can be reached on 703-305-4708.   The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system.   Status information for published applications

may be obtained from either Private PAIR or Public PAIR.   Status information for unpublished

applications is available through Private PAIR only.   For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George Eng
Primary Examiner
Art Unit 2643